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In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 412.....

HAROLD KRAMER,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO,

and

BRIEF OF PETITIONER

In Support of Petition for Appeal.

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INDEX.

PETITION FOR APPEAL TO THE SUPREME COURT OF THE STATE OF OHIO 1
Summary Statement of the Matter Involved 1
Reasons Relied on For the Allowance of the Appeal 3
BRIEF IN SUPPORT OF THE PETITION FOR APPEAL. 7

TABLE OF AUTHORITIES.

Cases.

Adair v. United States, 208 U. S. Sup. Ct. Rep. 173... 15
Burns, Jay Baking Co. v. Charles W. Bryan, etc., 264 U. S. Sup. Ct. Rep. 504 17
Fairmont Creamery Co. v. State of Minnesota, 274 U. S. Sup. Ct. Rep. 1 18
Liggett v. Baldridge, 278 U. S. Sup. Ct. Rep., 105 19
Meyer v. Nebraska, 262 U. S. Sup. Ct. Rep. 390 17
Mugler, Peter, v. State of Kansas, 123 U. S. Sup. Ct. Rep. 661 14
Norfolk & Western Railway Co. v. Public Service Commission of West Virginia, 265 U. S. Sup. Ct. Rep. 70 18
Pierce, Walter M., etc. v. Society of Sisters, etc., 268 U. S. Sup. Rep. 510 18
State of Ohio v. Boone, 84 Ohio St. 351 13
Weaver, D. E., etc. v. Palmer Brothers Co., 270 U. S. Sup. Ct. Rep. 402 18

Constitutions.

Constitution of Ohio:
Article I—Bill of Rights—Sec. 1 ..... 3, 7
Article I, Section 14 ..... 3, 7
Article I, Section 19 ..... 4, 7

Constitution of the United States:
Fifth Amendment 4, 7
Fourteenth Amendment, Section 1 .....4, 7, 12

Statute.

General Code of Ohio, Section 1329 .....1, 3, 8

In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. .....

HAROLD KRAMER,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

Your petitioner prays for writ of certiorari to review the decision of the Supreme Court of Ohio in the above case.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The petitioner is a dental mechanic and was defendant in a criminal action instituted in the Court of Myron J. Penty, Justice of the Peace, Warrensville Township, Cuyahoga County, Ohio, for violation of a statute of the State of Ohio, General Code Section 1329. This section defines what is the practice of dentistry. Prior to May, 1941, the practice of dentistry was defined as follows:

> *Section 1329.* "Any person shall be regarded as practicing dentistry within the meaning of this act, who is a manager, proprietor, operator or conductor of a place for performing dental operations or who, for a fee, salary or other reward paid or to be paid either to himself or to another person, performs, or advertises to perform, dental operations of any kind, or who diagnoses or treats diseases or lesions of human teeth or jaws, or attempts to correct malpositions

thereof, or who takes impressions of the human teeth or jaws, or who uses the words 'dentist,' 'dental surgeon,' the letters 'D.D.S.' or other letters or title in connection with his name, which in any way represent him as being engaged in the practice of dentistry."

On May 22, 1941, the above section of the Code was amended by adding the following language:

"Or who shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell or deliver any such substitute or the services rendered in the construction, reproduction, supply or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another, * * *."

This amendment became effective August 21, 1941.

The petitioner was charged with having repaired a certain false plate of one Ann Wallace without having received a prescription from a licensed dentist and with advertising the repair of dental plates and that such advertisements were directed to persons other than licensed dentists.

Upon the trial of said cause on May 28, 1942, the petitioner was convicted and judgment rendered in favor of the State of Ohio and petitioner was fined Two Hundred Dollars and cost. Error was prosecuted to the Common Pleas Court of Cuyahoga County, which court affirmed the judgment of the Justice Court without opinion. Appeal was then taken to the Eighth District Court of Appeals of Ohio, which court also affirmed the judgment without opinion. An appeal was then had to the Supreme Court of the State of Ohio upon a Motion to certify the record and an appeal filed as of right.

The Motion to certify the record was overruled July 8, 1943. The appeal filed as of right was dismissed on the Motion of the State of Ohio July 8, 1943. Re-hearing thereon was denied July 14, 1943.

This petition is based upon the action of the Supreme Court of Ohio in overruling the Motion of the petitioner for certification of the record and for leave to appeal as of right and the dismissal of a re-hearing July 14, 1943.

REASONS RELIED ON FOR THE ALLOWANCE OF THE APPEAL.

The affidavit was drawn under the part of Section 1329 of the Ohio General Code which reads as follows:

> "Or who shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell or deliver any such substitute or the services rendered in the construction, reproduction, supply or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another, * * *."

The law was and is unconstitutional and in violation of defendant's rights under the following sections of the Constitution of the State of Ohio, to-wit:

Article I—Bill of Rights—Sec. 1:

> "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

Article I—Section 14:

> "The right of the people to be secure in their persons, houses, papers, and possessions, against unrea-

sonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized."

Article I—Section 19:

"Private property shall ever be held inviolate but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads which shall be open to the public, without charge, a compensation shall be made to the owner, in money: and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner."

Said law also was and is unconstitutional and in violation of defendant's rights under the Fifth Amendment to the Constitution of the United States, which is as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment to the Constitution of the United States, which is as follows:

"Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuni-

ties of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The respondent is a dental mechanic, conducting his own business for the past seven years, and under the provisions of this State Law cannot operate at his trade unless he takes employment with a duly licensed dentist. The statute creates a situation where the price that the public must pay for repair work performed by mechanic is fixed by a licensed dentist. The statute gives absolute control of the mechanic to the licensed dentist. He must work for the licensed dentist or seek other employment.

WHEREFORE, your petitioner respectfully prays that an appeal be allowed to review the decision and judgment of the court below.

HAROLD KRAMER—*Petitioner,*

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Cleveland, Ohio,

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